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OFFICE OF PETITIONS

In re Patent No. 7,479,624
Glenn Morris
Issue Date: 01/20/2009
Application No. 10/629971
Filing or 371(c) Date: 07/30/2003
Atty. Docket No.: 21584-0002001

: DECISION ON
: LETTER REGARDING
: PATENT TERM ADJUSTMENT
: AND NOTICE OF INTENT
: TO ISSUE
: CERTIFICATE OF CORRECTION

This is a decision on the petition filed on February 25, 2009, which is being treated as a petition under 37 CFR 1.705(d), requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by three hundred fifteen (315) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by three hundred fifteen (315) days is **GRANTED to the extent indicated herein.**

Under the circumstances, the calculation of Office delay in accordance with 37 CFR 1.702(a)(2) and 1.703(a)(2) is properly calculated using the mailing date of the final Office action on June 22, 2006. Accordingly, an adjustment of 129 days is properly attributed to the Office for the period beginning on February 14, 2006, the day after the date that is four months after the date on which the reply to the non-final Office action was filed, and ending on June 22, 2006, the date of mailing of the final Office action under 35 U.S.C. 132. Thus the total period of adjustment pursuant to 37 CFR 1.702(a) is four hundred forty-four (444) days.

A further review of the record reveals that the Office errantly neglected to exclude from the patent term adjustment pursuant to 35 U.S.C. § 154(b)(1)(B) and 1.702(b) the number of days in the period beginning on the date on which a notice of appeal to the Board of Patent Appeals and Interferences was filed under 35 U.S.C. 134 and § 41.31, and ending on the date of the decision by the Board of Patent Appeals and Interferences. The period of exclusion, 668 days, commenced with the filing of a Notice of Appeal on August 21, 2006, and ended June 18, 2008, the date of the decision by the Board of Patent Appeals and Interferences.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application file does not indicate a change of address has been filed in this case, although the address given on the petition differs from the address of record. A change of address should be filed in this case in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **six hundred eighty-one (681) days**.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3232.

/Derek L. Woods/

Derek L. Woods
Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

CC: FISH & RICHARDSON P.C.
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UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,479,624 B2

DATED : January 20, 2009

INVENTOR(S) : Morris

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 905 days.

Delete the phrase "by 905 days" and insert – by 681 days--